

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA**

CHARLESTON DIVISION

IN RE: BOSTON SCIENTIFIC CORP.]	
PELVIC REPAIR SYSTEMS]	
PRODUCTS LIABILITY LITIGATION]	MDL NO. 2326
_____]	

UNOPPOSED MOTION FOR APPROVAL OF QUALIFIED SETTLEMENT FUND

Motley Rice LLC and Participating Law Firms ("Plaintiffs' Counsel"), as counsel for certain plaintiffs and certain additional plaintiffs in *In Re: Boston Scientific Corp. Pelvic Repair Systems Products Liability Litigation*, MDL 2326 (S.D. W.Va.), hereby moves this Court for entry of an Order to aid in the efficient processing and administration of a Confidential Master Settlement Agreement (the "Settlement Agreement") between Defendant Boston Scientific Corp. ("BSC") and Plaintiffs' Counsel to resolve the claims of certain claimants against BSC relating to BSC Pelvic Products (as defined in the Settlement Agreement). BSC does not oppose the motion.

This Motion seeks an Order (1) approving the Escrow Agreement ("Escrow Agreement"), attached hereto as Exhibit A, which forms a settlement escrow account ("Settlement Escrow"), (2) retaining continuing jurisdiction and supervision over the Settlement Escrow, and (3) determining that the Settlement Escrow, including any subaccounts thereof ("Accounts"), together constitute a single "qualified settlement fund" within the meaning of section 468B of the Internal Revenue Code of 1986, as amended ("Code") and Treasury Regulation sections 1.468B-1, *et seq.* ("Regulations").

Plaintiffs' Counsel and BSC have agreed to establish the Settlement Escrow as a "qualified settlement fund" under the Code, subject to Court approval. The establishment of the Settlement Escrow as a "qualified settlement fund" under the Code and Regulations, subject to the Court's continuing jurisdiction, is vital to the satisfaction of the objectives of Plaintiffs' Counsel and BSC. Payment by BSC of required settlement amounts into a qualified settlement fund will facilitate prompt and efficient payment to

participating claimants and implementation of the settlements. Prior to payment, Plaintiffs' Counsel will need to identify and address liens and/or subrogation rights and obtain executed release documentation from participating claimants in accord with the Settlement Agreement; having funds available and held by a third party will permit payment promptly upon completion of these steps.

The Court should approve the establishment to the Settlement Escrow as in the best interest of the Plaintiffs' Counsel, BSC and the claimants covered by the Settlement Agreement. Judicial approval of the Settlement Fund, and exercise of continuing judicial jurisdiction, is required for the Settlement Fund to comply with the requirements of section 1.468B-1 (c)(1) of the IRS Regulations, which require that a qualified settlement fund be "established pursuant to an order of, or is approved by, the United States, any state (including the District of Columbia) territory, possession, or political subdivision thereof, or any agency or instrumentality (including a court of law) . . . and is subject to the continuing jurisdiction of that governmental authority."¹

The Settlement Escrow will qualify as a "qualified settlement fund" under section 468B of the Code and sections 1.468B-1, *et seq.* of the Regulations, because: (1) the Settlement Escrow is being established subject to approval of the Court, and will be operated pursuant to the terms and conditions of the Settlement Agreement; (2) the Settlement Escrow will be subject to the continuing jurisdiction and supervision of the Court; (3) the Settlement Escrow is being established to resolve or satisfy claims of alleged torts or violation of law arising out of implantation of one or more BSC Pelvic Products; and (4) the Settlement Escrow will be an escrow account, and its assets will be segregated from the general assets of BSC and deposited therein. The Escrow Agent ("Escrow Agent") will establish Accounts to be used solely for permissible purposes in administering the Settlement Agreement and, with approval of BSC and Plaintiffs' counsel, the Escrow Agent may establish additional Accounts for administration of the Settlement Agreement. The Settlement

¹ Treasury Regulation Section 1.468B-1 provides that a previously established account may thereafter be constituted a qualified settlement fund through a Relation Back Election by the establishing parties, provided all other requirements for a qualified settlement funds are met." The Escrow Agreement provides that, pursuant to Treasury Regulation Section 1.468B-1(j), the Administrator shall attach to the Settlement Funds' first timely-filed federal income tax return a fully executed copy of a "Regulation Section 1.468B-1 Relation Back Election."

Escrow, including all Accounts which may be established, together constitute a single qualified settlement fund.

Plaintiffs' Counsel also hereby requests that the Court approve the appointment of Wells Fargo National Bank as the Escrow Agent of the Settlement Escrow to administer the Settlement Escrow pursuant to the terms of the Settlement Agreement and Escrow Agreement. The funds held by the Escrow Agent in the Settlement Escrow shall be disbursed by the Escrow Agent only pursuant to and in conformity with the terms of either the Settlement Agreement, Escrow Agreement or Plaintiffs' Counsel and BSC. The Escrow Agent shall further serve as the "administrator" of the Settlement Escrow as a "qualified settlement fund" within the meaning of section 1.468B-2(k)(3) of the Regulations.

CONCLUSION

For the reasons stated above, the Plaintiffs' Counsel respectfully requests that the Court approve establishment of the Settlement Escrow as a qualified settlement fund and enter an Order in the form submitted herewith.

Respectfully submitted,

s/Fred Thompson
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CERTIFICATE OF SERVICE

I hereby certify that the Unopposed Motion for Approval of Qualified Settlement Fund was served on Counsel for Defendants via electronic mail on this 28th day of June, 2016.

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